

## **The Devastating Impact of “Affiliate Nexus Tax” Law on 7,800 Michigan Small Businesses**

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A critical element has been lost in the debate surrounding proposed Internet sales tax legislation in HB 4202 AND 4203: state-by-state piecemeal attempts have *already* devastated 76,000 small online-based businesses around the country, yielded states \$0 in new sales tax revenue and, in fact, reduced income tax revenue.

Over the past three years, 9 states have passed ‘Affiliate Nexus Tax’ laws, unconstitutional attempts to compel out-of-state retailers to collect their sales tax. These Affiliate Nexus Tax (aka ‘Amazon tax’ or ‘Click-through Nexus’) laws claim out-of-state retailers have ‘nexus’ or physical presence, if they advertise on websites owned by businesses (known as ‘Publishers’ or ‘Affiliate Marketers’) in states where these laws have passed, thereby requiring them to collect sales tax.

These laws have been failures to the states and the impact on Affiliate Marketers has been catastrophic: **out-of-state retailers simply sever their advertising agreements with Affiliate Marketers in order to avoid collecting sales tax.** These affiliate marketing businesses lose a devastating portion of their income, causing them to move out-of-state, lay off employees, or shut their doors. This will happen in Michigan if the Affiliate Nexus Tax is included in HB 4202 AND 4203.

### **Real Devastation to Michigan Small Businesses**

- There are 7,800 web-based small businesses in Michigan who will be devastated.
- An estimated 1,000 online retailers terminate their advertising agreements when these state laws pass.
- **1/3 move out of state – 1/3 downsize and have lay-offs – 1/3 shut their doors.**
- Michigan web-based Publishers earned more than \$734 million in 2012 and paid an estimated \$28.7 million in state income tax.
- States don’t gain any new sales tax revenue, and *lose income tax revenue* – especially when these businesses move out-of-state and take all their income with them.

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Performance marketing was a \$24 billion industry in 2012, growing more than 15%, and it is the fastest growing type of advertising and one of the fastest growing technology sectors. *This industry is made up of entrepreneurs, is growing and creating a lot of jobs, except in states where the affiliate nexus tax passed.*

#### Track Record of Failure

Over the past 4 years, there have been more than 70 attempts at Affiliate Nexus Tax legislation. The odds are not in your favor:

- A total of 9 laws passed (out of 70+ attempts).
- Of that 9, 2 have rescinded (CA and PA); 3 are considering repeal (CT, NC, RI) and multiple lawsuits have ensued (IL, NY, NC).
- \$0 in new sales tax revenue has been credited.

#### The REAL Solution

Only Congress has the power to change interstate commerce law. Thankfully, the “Marketplace Fairness Act” (Enzi/Alexander and Durbin) has a very high chance of passage in 2013. The Senate expedited the hearing of this bill with a 76/24 passage, and will have a floor vote on May 6<sup>th</sup>. This bills would allow Michigan, and all states, to collect sales tax from out-of-state retailers; the nexus criterion goes away. **The PMA supports both the MFA, it allows the 76,000 devastated companies to get back in business – and will save the 7,800 Michigan business from being harmed.**

#### State-by-State Impact

Below is detail about each state where an Affiliate Nexus Tax law passed: the number of Affiliate Marketers in the states before the laws passed, their earnings and contributing state income tax revenue:

##### New York

Affiliate Nexus Tax passed in 2008

- 15,000 affiliate marketers
- In 2007, they earned \$746 million and paid an estimated \$51 million in state income tax

##### North Carolina

Affiliate Nexus Tax passed in 2009

- 6,000 affiliate marketers
- In 2008, they earned \$416 million and paid an estimated \$32 million in state income tax

##### Rhode Island

Affiliate Nexus Tax passed in 2009

- 800 affiliate marketers
- In 2008, they earned \$57 million and paid an estimated \$4 million in state income tax

##### Illinois

Affiliate Nexus Tax passed in 2011

- 9,500 affiliate marketers
- In 2010, they earned \$744 million and paid an estimated \$22 million in state income tax

### **Connecticut**

Affiliate Nexus Tax passed in 2011

- 3,000 affiliate marketers
- In 2010, they earned \$236 million and paid an estimated \$7 million in state income tax

### **Arkansas**

Affiliate Nexus Tax passed in 2011

- 2,000 affiliate marketers
- In 2010, they earned \$157 million and paid an estimated \$11 million in state income tax

### **California**

Affiliate Nexus Tax passed in 2011

- 25,000 affiliate marketers
- In 2010, they earned \$1.9 billion and paid an estimated \$152 million in state income tax

### **Pennsylvania**

Affiliate Nexus Tax announced (reinterpreting existing statute) December 1, 2011

- 9,000 affiliate marketers
- In 2010, they earned \$700 million and paid an estimated \$22 million in state income tax

### **Georgia**

Affiliate Nexus Tax passed in March, 2012, went into effect July, 2012

- 6,400 affiliate marketers
- In 2011, they earned over \$600 million and paid an estimated \$36 million in state income tax.

### **In Conclusion**

The PMA and our industry made up of over 7,800 small businesses in Michigan, whose incomes will be devastated or forced to move out-of-state. We urge you to vote NO on the Affiliate Nexus Tax in HB 4202 AND 4203. And we hope you will throw your support towards the Congressional bill that is the REAL solution to this problem.

*The Performance Marketing Association (PMA) is a not-for-profit trade association founded in 2008 to connect, inform and advocate on behalf of performance marketing, a multi-billion-dollar marketing channel, which comprises more than 225,000 businesses and individuals. Continued growth of the performance marketing space is expected as advertisers, facing small budgets and big expectations, increasingly look to performance-based marketing initiatives to expand their business. Additional information is available at:  
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